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To: U.S. Department of State
CA/ OCS/ PRI
Adoption Regulations Docket Room SA-29
2201 C Street, NW
Washington, D.C. 20520
Electronically emailed to: adoptionregs@state.gov

Re: State/ AR-01/ 98

Comments on 22 CFR Parts 96 and 98
**Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000;
Accreditation of Agencies; Approval of Persons; Preservations of Convention Records;
Proposed Rules**

Submitted by: Comments by
The Adoption Advocates of America Consumer Protection Network
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The Adoption Advocates of America Consumer Protection Network is a group of volunteers that is about **"Rights for Adopting Families"**. We advocate for consumer protection in adoption for adoptive families. We also have had members of our group to attend many of the Hague meetings and submitted comments at the April 2001 meeting.

Mission

Advocate for the rights of adopting families. To be a support resource for families that experiences disappointment and/or financial loss in the adoption process. To advocate for adoption reform that will protect families during and after the adoption process.

General Response and Recommendations

This is long awaited and a much needed piece of legislation. We wish the regulations would include all adoptions, domestic and international. The welfare of the child is very important but the welfare of the consumer of adoption services have been long overlooked. Adoptions are for the most part a very different business than any other social welfare agency or any business for that matter. It is a very lucrative business involving emotional consumers and the welfare of children and therefore should be regulated with detailed guidelines and stiff penalties for violations.

We understand the US cannot change activities of corruption in another Country but *the US can hold US adoption agencies accountable for participation in unethical, illegal and corrupt activities in other Countries*. This is where the DoS has to make its stand and this is where a difference can be made. US citizens should operate within the laws of any country where they operate. If all agencies and persons in the US would agree to abide by the laws of the US and the laws of other Countries, corruption would be wiped out instantly. US agencies precipitate illegal activities and that is why these regulations have been designed.

We agree with the majority of the regulations. Our comments are only on those that we recommend changing, adding or amending in some way.

Subpart B,

96 Selection, Designation, and Duties of Accrediting Entities

This section about accrediting entities most concerns our group. We have for years assisted families that feel they have been victims of unethical or illegal adoption practices. We have found

State licensing departments to be limited in their ability to assist these families in mediation of a resolution suitable to the victims.

§ 96.6 (h) "Conflict of interest of accrediting bodies"

We believe that accrediting bodies will have a conflict of interest if any accrediting body has any board members, employees, or an interest in an adoption agency or any adoption provider. This section should be spelled out very carefully.

We want to state that we feel that any accrediting entity will have a conflict of interest if the same entity that accredits an agency also investigates complaints. Case in point. This is the current system that individual States use at this time. We feel that the current system has failed the consumer and this system should not be used.

We have evidence where several adoptive parents have filed written complaints to State licensing departments only to find out later licensing officials report to the general public that no complaints have been filed on the agency in question. We will be happy to provide you with documentation of these cases. We have documentation from many States.

We also present this information about the State of MD and how they handle complaints.

Quote: **Title:** The Adoption Maze

Highlight: The supply of babies is severely limited, and the market is unregulated. But savvy couples manage to succeed despite high costs, bureaucratic roadblocks, and outright scams

Author(s): Kim Clark and Nancy Shute

Citation: March 12, 2001 p 60-66, 69

"Government officials rarely treat their complaints seriously. Bill Lee, Maryland's adoption licensing coordinator, says when he gets complaints from adoptive parents about money, he makes a courtesy investigative phone call but can do nothing more: "We toss 'em." The state's regulations don't cover such contract disputes, he explains."

The state of MD will only report that all it's agencies listed on it's website are in good standing and if they have had any complaints they have been resolved. MD does not respond to written freedom of information request for documentation of information on adoption agencies in MD. The information received from States varies widely. We would prefer a standard process for requesting information on accredited agencies.

Also, add to this section:

Accrediting entities should not require the complaint to sign a waiver stating the complaint must agree to hold harmless the accrediting entity from any damages, resulting from defense of claims of slander, libel, unfair competition, false light from the agency involved, or statements such as this.

Subpart C

96.13

Amend to read

(a) Home studies, child background studies and post-placement services

This requirement will reduce the number of choices for prospective adoptive parents in terms of agencies providing post placement services. The agency that provided the homestudy is usually the agency to provide post-placement services and this should continue as the homestudy agency is already aware of the family issues and best qualified to provide post placement services.

96.35 - Suitability of agencies and persons to provide adoption services consistent with the Convention.

96.35(b)(4) and (5) and (6) Note:

The prescribed ten-year period for which agencies must provide accrediting entities with any disciplinary actions, complaints and investigations is a good requirement.

But this requirement is also unfair. Some States do keep complaints on record but many do not.

Many State licensing departments do not keep nor do they even respond to complaints unless the complaints directly state what State regulation was broken. The current system is unfair to agencies and consumers due to the different procedures followed by each State-licensing department. Some States such as MD report they take care of complaints and therefore there are not any outstanding complaints. For the State of MD we would assume no complaints on file for any agency that is in licensed n MD at this time. The State of Ohio will send copies of complaints if a formal request is given. The State of Texas will uses a number scale to rate complaints and will not if complaints were filed and if they were substantiated or not. We can provide information we have received from State licensing to show the inconsistencies in reporting and data keeping of complaints.

We do not have a fair answer for this section only want to make the Department of State aware of the unequal way this section will be.

96.35

Add

(g) Evaluates the moral character of their employees and any other associate, contract provider.

If known involvement in adult business issues, or issues such as civil, criminal, domestic violence, financial problems even if not convicted of a crime the individual should not work in adoption.

Example: a person with a record of driving while impaired, Drug abuse, Domestic violence or several arrests of any kind, even if not convicted. If the agency is working with this person they must show the person has been to drug rehabilitation or other mental health services have been accessed to insure they are not continuing in this type of behavior. A record of a mental health evaluation should be in the employee file if they choose to hire a person with any issues of less than excellent character.

96.37

Modify

(f) Be modified to allow bachelor's degree personnel that is approved and or licensed by their State Licensing Department to perform a home study and post placement services.

96.40 Fee policies and procedures

Amend

All money should be accounted for

Item (e) The word 'minimized' should be defined. We recommend that no more than \$3,000 can be requested by the agency to be carried on any one person to be transferred to make overseas payments to agency persons, employees or contractors. Additional money is required to pay for food, lodging, airfare and incidental is acceptable. Hand caring fees to be paid to agency persons increases the cash amount the family has to carry. If any agency fees are to be hand carried by families the agency should NOTE: why this is necessary and for what the payment covers.

If an agency is only required to give receipts for total fees collected by the agency this will not take care of the current black whole of money that is given in foreign Countries. Agencies will choose to have money paid directly to hired facilitators and contractors to evade giving receipts.

96.39(d) Blanket Waivers of Liability

This section is unclear what the Department defines as a "blanket waiver" of liability.

This is a big issue and should be addressed. We believe families do have to accept risk but also agencies need to take care in whom they hire. We believe that agencies should be responsible for who they hire but only to the limit of the amount of money they pass on to the person or persons they hire. Such as if an agency pays a lawyer in Guatemala \$15,000 to process an adoption and the lawyer disappears with the money the agency should pay the family back any money paid by them to the agency that was passed on to another party. The family would have to prove negligence to sue the agency for any funds other than those paid to the lawyer on their behalf.

We believe to be fair to agencies as well as consumers that the Department of State should provide staff to assist with mediation of complaints. The Department of State should seek out ways to protect agencies and consumers equally.

96.45 and 96.46 – Using Supervised Providers in the United States and in other Convention Countries.

Agencies need to be responsible for who they hire as noted above. Agencies need to take extra care in which they hire but should not be liable for their actions unless the agency is aware of these actions and that would be negligence.

We believe this section needs to be spelled out in greater detail.

SOLUTIONS: Agencies should be required to have any facilitators and or, contractors checked out to the same extent they do employees.

US Embassy's are often aware of facilitators and contractors that work in these foreign Countries and they should be required to notify the Department of State should they have knowledge of unethical or illegal activities of these persons. The agencies should check with the Department of State to ensure the person or persons they hire are not of questionable reputation.

96.66 Note:

Accrediting bodies should NOT do investigations. This will result in similar issue that currently happen with State Licensing bodies. The licensing bodies because they are failure with the agency tend to take the side of the agency and do not have legal authority or the personnel to do appropriate investigations. Because many complaints there are no paper trails or spilled blood these investigations take a considerable amount of time and effort.

§96.69 Filing of complaints against accredited agencies and approved persons

We strongly object to the requirement set forth in §96.69 (a) (1) that states that complaints must first be filed with the agency or person providing adoption services.

We recommend that after a period of 30 days if the consumer is not stratified with the outcome of their complaint that the consumer may file a complaint with the Complaint Registry. All complaints that are believed to involve criminal actions should be reported directly to the complaint registry and an investigation should be started within 3 business days.

We feel the following simple procedures would help consumers make informed decisions:

Require each agency or person providing adoption services to give each family a copy of the current laws and regulations of the Country in which they wish to adopt. This information can be easily found at the US State Department website.

Require that each agency or person providing adoption services give each family a statement as to laws regarding bribes, large sums of money and other issues of importance regarding laws, travel advisories of Countries and other issues that could affect those traveling to adopt. This information could be kept and updated at the US State Department website. Require agencies or persons providing adoption services to give each family information as to how to contact the contact at the Central Authority should they feel they are part of an illegal adoption.

Require that US embassy's take signed written statements from families in the way of a form, stating what payments were made while they were in the country. Each family should sign stating they have not taken part in any known child buying or payment for a child or payments not disclosed in the form. The Central Authority should send these forms on a regular basis for review at the Central Authority.

An office within the Central Authority for consumer information and education should be formed. This office should have a crisis line that is open 24 hours a day for adopting families. This office should assist adopting families in finding the appropriate information and referrals for services and assistance with any crisis situation.